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NOTE AND COMMENT.

"PECOTE": A BIT OF LEGAL ARCHAEOLOGY.—In the case of *Pusey v. Pusey*, 1 Vern. 273 (1684), the "bill was, that a horn, which time out of mind had gone along with the plaintiff's estate, and was delivered to his ancestors in ancient times to hold their land by, might be delivered to him; upon which horn was the inscription, viz. *pecote this horn to hold huy thy land*." The bill was demurred to in that the plaintiff did not by his bill pretend to be entitled to this horn, either as executor or devisee; nor had he in his bill charged it to be an *heir loome*. The demurrer was overruled and defendant ordered to pay the costs. This is frequently cited as a leading case and stands for the proposition that a chattel of unique value may be recovered in a suit in equity.

There has been considerable discussion of the case because the grounds of the decision are insufficiently reported, (Cf. *Nutbrown v. Thornton*, 10 Ves. 163; FRY, SPECIFIC PERFORMANCE, 33, and elsewhere), but the discussion is limited to the equitable question involved. The meaning of the inscription on the horn has been ignored. The case appears in many of the case books and texts on equity, and as the student is always present in every class, with a desire to know the meaning of the inscription, particularly of the word

"*pecote*," some consideration of it, though useless legally, may be comforting pedagogically.

The land was held by tenure of a horn or cornage and this horn was an *heirloom*, which though of the nature of a chattel shall go by special custom to the heir along with the inheritance and not to the executor. (2 BLACKSTONE, COMM., 427). LITTLETON says (§ 156) that the tenant by cornage owed the service of winding a horn on the approach of the enemy. MARRLAND characterizes this explanation of LITTLETON as an "idle tale" (Cf. 5 ENG. HIST. REV. 626.) but he cites an instance of tenure by cornage from BRACON'S NOTE BOOK, pl. 1270, in which the tenant is bound to follow the King against the Scots, leading the van when the army is advancing, and bringing up the rear during its return, "*quod quidem reputatur esse magna seriancia * * * quia dedit cornagium quod anglice dicitur horn gelde.*" Whether this was called a cornage because *horn gelde* was exacted, as MARRLAND thinks, or whether it was a cornage because the tenant was a horn man, is for our purpose a matter of indifference, because the facts in our case are that a horn exists, that the inscription in question is upon it and that the horn has been held from time immemorial as an heirloom, apparently as a symbol of title.

The word "*pecote*" seems to be made up of the root word "*cote*" with the prefix "*pe*." It may be seen that the word "*cote*" is etymologically equivalent to "*quoth*." According to the OXFORD DICTIONARY the prevailing form of this word from 1350 to 1550 was "*quod*" (Cf. 1362, Langl. P. Pl. A II, 5. Loke on ye lusthound quod heo). Alternative forms "*cod*" and "*quoi*" existed in the fourteenth century. The orthographical variants *qu* and *c* may be commonly observed in English manuscripts and printed books (Cf. also *quum* and *cum* in Latin). The *qu* is equivalent in pronunciation to *keu*. In pronouncing this *k* sound with a following rounded vowel the lips shape themselves to pronounce the *w* sound between. In the earlier form of the word this sound appears in the spelling but in the later form it disappears.

The explanation of the prefix "*pe*" is more difficult. It appears to be a variation of "*be*." In Middle English, during which period this inscription was made, if it did not originate even earlier, initial *b* changed sporadically into *p* (See 2 KALUZA, HIST. GRAM. DER ENGLISCHEN SPRACHE, III, and 271 ANM. 2). Examples of this change are: English "*purse*" from medieval Lat. *bursa* through old French *burse* (compare German *Boerse* and Russian *birzha* meaning "board of trade," from the same source); English "*put*" from O. F. *bouter*; English "*pudding*" from O. F. *boudin*. Unfortunately the chain of proof is not complete for this change from *b* to *p*, since the prefix "*be*" is an old German element and therefore might not have been subject to the same sound changes as a word of Latin or French origin like the ones quoted above. But it is a matter of common observation that a lower class German passes easily, apparently involuntarily, from "*hartes b*" to "*weiches b*." Of course the whole matter may be merely a blunder in spelling, but one shrinks from taking refuge in such an explanation until after all other resources are exhausted. It might, too, be explained as a graphic

variant, as our small letter "b" may easily be changed to a "p" by prolonging the stem below the line. There is, however, no evidence in the printed report of the character of the writing in the manuscript report of the case.

If the above linguistic arguments are valid, they bring us to the English word "*bequoeth*." This does not appear, however, in our English dictionaries, either as a past or present tense, and—a fact that for our purpose is more discouraging—it does not give a good meaning to our inscription, if inserted in place of "*pecote*." But the root "*quoeth*" comes from an obsolete present tense "*quethe*," derived from Anglo-Saxon *ciwethan* or *ciwethen*, meaning, prior to the eleventh century, "*to say*." In the fourteenth century it meant "to make formal assignment of property" and also meant "to leave by will," the last being the only surviving sense for which it is a proper term.

If the word "*bequeath*" is substituted for "*pecote*" in the inscription, we have an intelligible sentence that fits the situation perfectly. The horn was an heirloom handed down from father to son, apparently as a symbol of title to the land held by tenure of cornage. The inscription on the horn is an instruction to the grantee of the horn, "bequeath this horn [to thy successor] to hold buy thy land." It will be noted that the word *buy* in this paraphrase is printed *huy* in the report. This seems to be simply a blunder. The entire inscription is printed in italics and the italic *h* which occurs also in the words "*horn*" and "*hold*," just preceding the word in question, has the loop turned in toward the stem of the letter so that it might be easily confused with a *b*.

The peculiar "hold buy" is easily explainable as meaning "hold fast to," as in the phrase, "hold fast by that which is good." The "*huy*" might, too, be a variant spelling of "why," and it also is equivalent to the "hui" which appears in the French "aujourd'hui," but neither of these meanings would have much significance in connection with the rest of the sentence.

It may be said that it is possible to read the "*pecote*" as "*bequoeth*," an obsolete past tense of bequeath, and assume that there is some subject such as "ancestor" understood or that has been erased. The erasure at the beginning of the sentence is quite possible and would occur without affecting the rest of the inscription.

J. H. D.